ETHICS: MAKING THE RIGHT DECISIONS

2006
ANNUAL ETHICS TRAINING
FOR
DESIGNATED DEPARTMENT OF DEFENSE PERSONNEL

http://www.defenselink.mil/dodgc/defense_ethics/.

DEPARTMENT OF DEFENSE
Office of General Counsel
Standards of Conduct Office
1600 Defense Pentagon, Room 3B652
Washington, DC 20301-1600

Introduction

Resolving potential ethics problems

Got Ethics Questions?

Contact your ethics counselor

before you act.

Why Ethics Rules?

- **Ensure we perform our mission with public interest in mind.**
- **Uphold public's confidence in integrity of Government.**

Topics

- Seeking Employment Outside the Government
- Post-Government Service Restrictions (including additional restrictions for senior officials)
- Use of Official Position
- Official Support of Nonfederal Entities
- Conflicting Financial Interests
- Use of Government Resources for Personal Purposes
- Supervisor Responsibilities When Reviewing Financial Disclosure Reports

Our Approach

- General Rule
- Reflection
- Questions
- Explanations

Seeking Employment Outside the Government

SCENARIO: Until 13 months ago, you were the Deputy Program Manager for a program partly supported by a $30 million contract for helicopter blades from the Whirly Company.

You now have different responsibilities and are no longer involved with any matters that affect the Whirly Co.

QUESTION:
The President of the Whirly Co. is interested in hiring you now.

What may you tell him?

Possible Answers

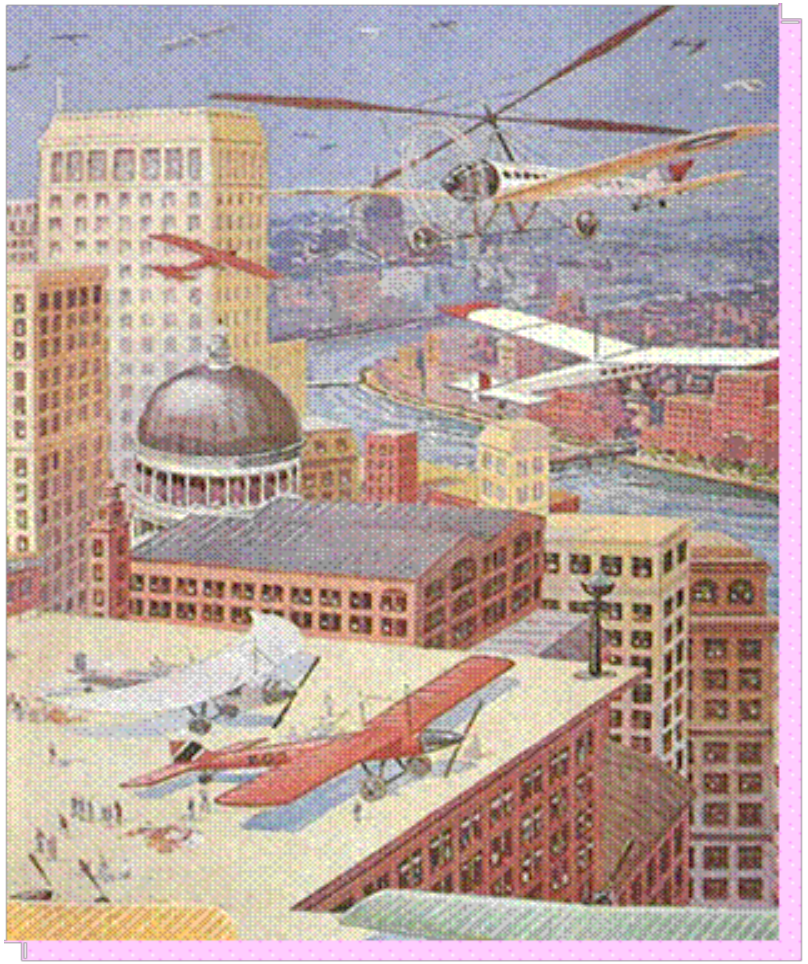
1. "Thanks, I’m definitely interested in the job. Please tell me all about it."

2. "Thanks, but I have to say ‘no.’ Since I was the deputy program manager for a program that involved a large contract with your company, the Procurement Integrity Act will bar me for life from working for your company."

3. "Thanks, but as long as I’m working in any job in the Government, the ethics rules don□t allow me to seek employment with anybody doing business with our agency."

Correct Answer

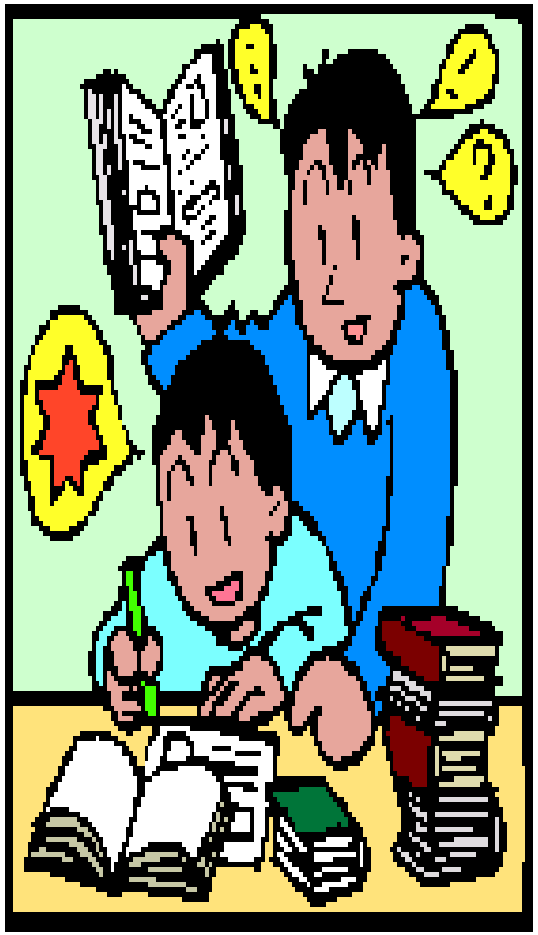
The first answer is the correct one. It follows from the general rule. You are not performing Government duties that affect the financial interests of the Whirly Co., so, under the general rule, you may seek employment with the company.



Post-Government Service

SCENARIO: Your last job with the Government was providing oversight of the "We Want You" program, a joint service program to improve military recruiting in high schools. A contractor, Military Recruiting Enterprises, Inc. (MRE), supports the program by providing pamphlets describing the advantages of joining the armed forces. One of your responsibilities was to compose and design the text of the pamphlets.

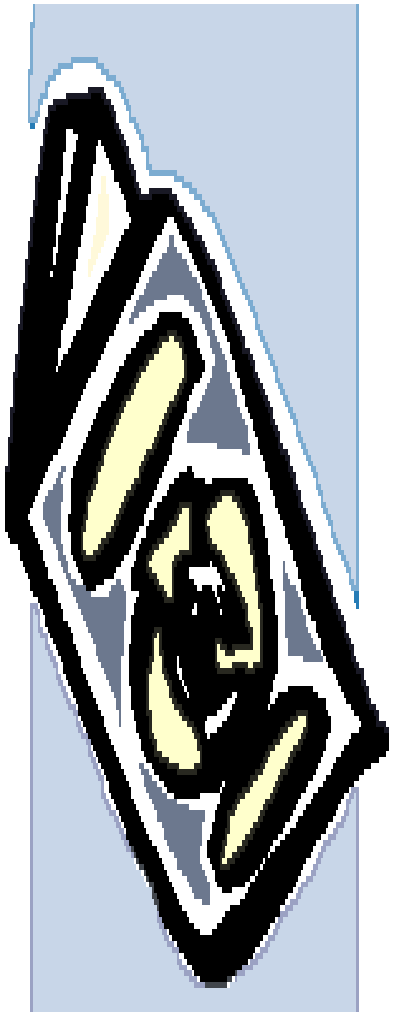
QUESTION: If employed by MRE, may you contact the military recruiters on behalf of MRE to ask what they want included in the pamphlets?



Possible Answers

1. Yes. You would not be involved in any sales or marketing. Therefore, you won't be communicating with recruiters with the intent to influence them. Since you are familiar with the pamphlet, you'd be able to answer any questions they might have, saving time and effort.
2. Yes. While it's true the contract for the pamphlets supplied by MRE was a "particular matter," while you were in the Government, you did not have any *procurement* responsibilities for the contract. Therefore, you may communicate with recruiters on behalf of MRE regarding that particular contract, even if you do have intent to influence.
3. No. The contract for the pamphlets supplied by MRE is a "particular matter." Your last Government job included work on the pamphlet contract and the design and composition of the text. In your new position with MRE, you may not ask military recruiters what they want included on the pamphlets.

Correct Answer



3.Your responsibilities for the "We Want You" program included designing and composing the text of the pamphlets. You performed work on the contract (and thus, the particular matter).

Even though you would be working on a new and supposedly different pamphlet, the contract is the same one, and so it's the same particular matter.

Also, if you contact your old colleagues, they may continue to treat you as a colleague and not as a contractor, thereby giving you preferential treatment. Therefore, you should not communicate to or appear before the military recruiters on behalf of MRE.

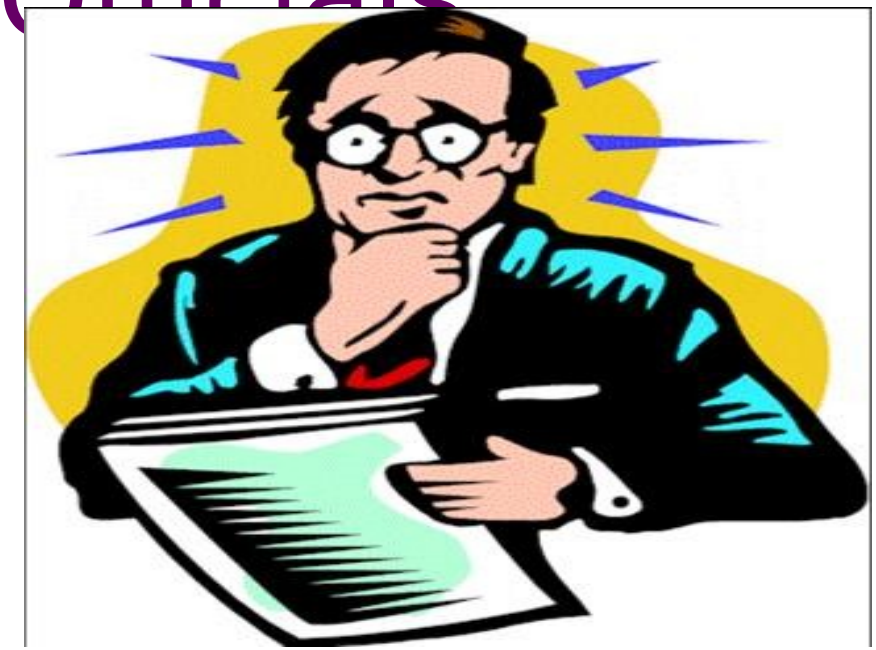
Post Government Restrictions – Senior Officials

- As with most ethics rules, the rule we just examined applies to all Federal officers and employees. There are a few additional rules that apply only to senior officials. Does it make sense that senior officials might have a few additional restrictions?
- The basic purpose of our Federal ethics frame-work is to uphold the public's confidence in the integrity of the Government.

As senior officials have the most influence in the operation of their Government agencies, there are more restrictions on their activities.

Post Government Restrictions – Senior Officials

SCENARIO: Six months ago your former supervisor retired as a USAF Major General. For her last two years, she commanded an Air Force base. She's now employed by a defense contractor, Reconnaissance Unlimited, and is scheduled to represent them at a meeting with the Defense Intelligence Agency (DIA). The DIA attendees will include an Air Force Lieutenant General, a DoD civilian senior executive, and a Navy Captain.



QUESTION:

May she represent Reconnaissance Unlimited at the meeting with DIA?

Possible Answers

1. Yes. Since DIA is not part of the Air Force, and she did not serve with DIA during her last year as a Major General, she is not prohibited from representing Reconnaissance Unlimited at the DIA meeting.

2. No. Although she served only with the Department of the Air Force during her last year as Major General, it is part of the Department of Defense, as is DIA, so she is prohibited from representing Reconnaissance Unlimited at the DIA meeting.

3. No. She served with the Department of the Air Force during her last year as a Major General, and since one of the DIA attendees is an Air Force Lieutenant General, she is prohibited from representing Reconnaissance Unlimited at the DIA meeting.

Correct Answer

#3. The rule states that she may not communicate to or appear before an officer or employee of her former agency with the intent to influence on any official matter. Since your former supervisor was on active duty, her only former agency is the Department of the Air Force.

The Air Force Lieutenant General at the DIA meeting is an official with DIA because that's where he's assigned. He's also an officer of the Air Force. Therefore, the one-year prohibition on communicating to or appearing before officers or employees of her former agency on behalf of anybody outside the Government with the intent to influence - applies.

Use of Your Official Position

SCENARIO: You are in charge of the Tri-Service Interoperability Task Force. The Task Force includes personnel from all three Military Departments, as well as DoD civilian employees. You believe that Task Force personnel would be effective if they joined the Association of the U.S. Army (AUSA),a nonfederal organization that frequently deals with topics of interest to the Task Force. To join, employees would have to sign up in their personal capacities and pay membership fees. You assign a member of your staff to distribute AUSA flyers to the Task Force and to give you periodic reports on who has joined.

QUESTION: Have you done anything wrong?

Possible Answers

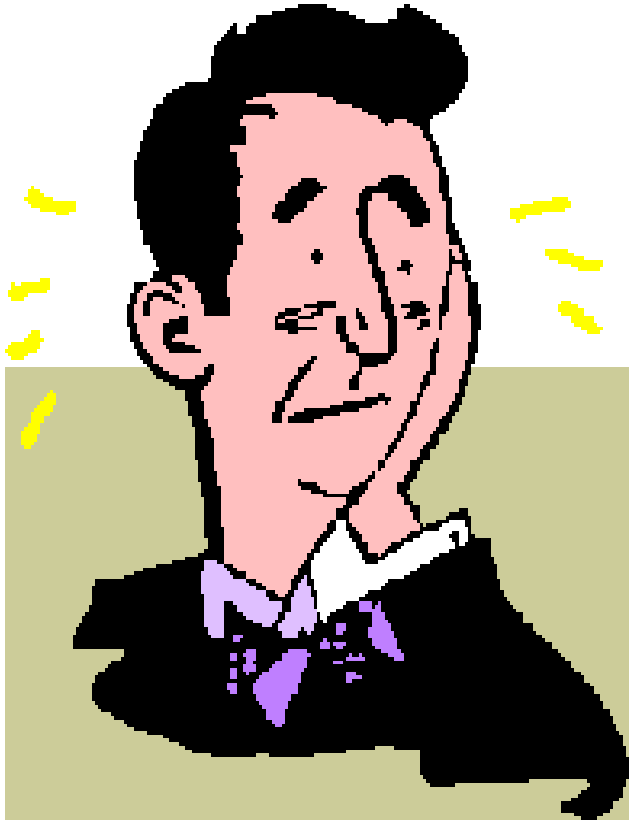
1. Yes. Although membership in AUSA by Task Force personnel would help it to accomplish its mission, requiring periodic reports on who had become an AUSA member suggests that you are coercing Task Force personnel to join AUSA.

2. Yes. Although membership in AUSA by Task Force personnel would help it to accomplish its mission, asking your staff to distribute AUSA flyers to the Task Force and to give you periodic reports on who had become an AUSA member suggests that you are coercing your staff to join AUSA.

3. No. There is an exception for using your official position to promote the activities of nonfederal entities when it helps accomplish the mission.

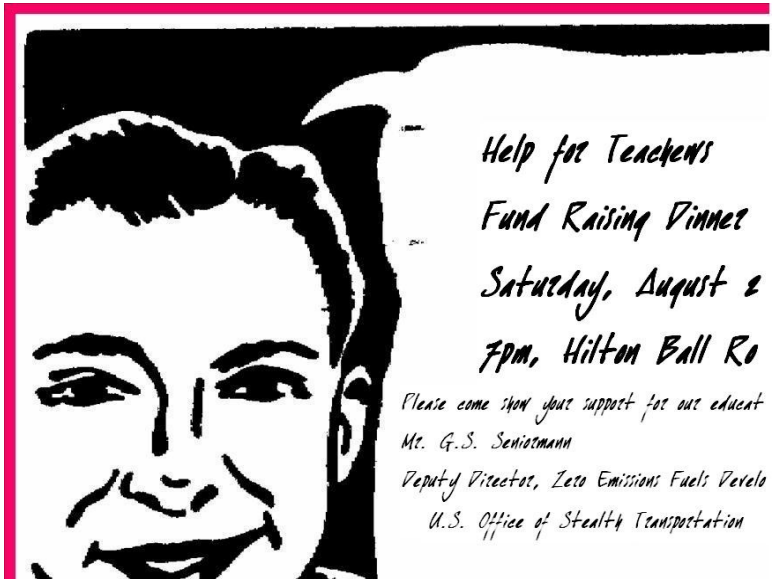
Correct Answer

#2. Asking your staff to distribute AUSA flyers to the Task Force and asking to give you periodic reports on who on the Task Force had become an AUSA member are *both* violations of the prohibition on using your official position to promote the activities of nonfederal entities (in this case, AUSA's efforts to increase its membership).



Use of Your Official Position

SCENARIO: You volunteer for Help the Teachers, a nonprofit civic group that provides counseling to public school teachers to help them cope with the stresses of their profession. The group will distribute flyers to advertise its upcoming fundraising dinner. The fundraising chairman proposes to include your name as a volunteer on some of the flyers, describe your contribution, and refer to your Government position (Deputy Director, Zero Emission Fuels Development, U.S. Office of Stealth Transportation).


Help for Teachers
Fund Raising Dinner
Saturday, August 2
7pm, Hilton Ball Ro
Please come show your support for our educat
Mr. G.S. Seniormann
Deputy Director, Zero Emissions Fuels Develo
U.S. Office of Stealth Transportation

QUESTION:

May you consent to the use of your Government title on the flyers?

Possible Answers

1. Yes. Help the Teachers is a nonprofit organization in the service of a worthy cause. Although the general rule is that you may not use your official position to promote the activities of nonfederal entities, there is an exception for nonprofit entities that serve a worthy cause, since the purpose of Government is to promote the general welfare of the people.

2. No. The general rule is that you may not use your official position to promote the activities of nonfederal entities. There are no exceptions.

3. No. The general rule is that you may not use your official position to promote nonfederal entities. There are exceptions, but none that apply here.

Correct Answer

#3. There are a few, very narrow exceptions to the rule against using your official position to promote the activities of nonfederal entities, but none apply to Help the Teachers.

Exceptions:
1. Combined Federal Campaign
2. Military Relief Societies
3. Emergency and disaster appeals approved by Office of Personnel Management.
4. Organizations composed primarily of agency employees or their dependents, under certain circumstances

Government Resources

SCENARIO: As the Recreation Officer at Fort Morly, you are responsible for all recreational facilities on post. A local private school asks permission to use the post basket-ball court for a championship game. You would like to say "yes." Such use would be in the Department's community relations interests - but you know that if you approve their request, it will encourage other youth and civic groups in the community to request use of the athletic facilities -- and you will be unable to accommodate all their requests.

QUESTION: What should you tell the private school?

Possible Answers

1. Yes, it may use the basketball court. Supporting the private school's championship game would meet two of the three criteria for approval, in that it would not interfere with the performance of official duties and would be in the Department's community relations interests. As long as a majority of the criteria are satisfied, and the end result benefits the Department, you may approve the use of the court.

2. No, it may not use the basketball court. You know that you will be unable to accommodate requests for support for comparable events of other similar youth and civic groups.

3. No, it may not use the basketball court. The private school charges a substantial tuition and is open only to those students who can pay it. Public funding may not be used for the benefit of private groups.

Correct Answer

#3. You may only support the private school's championship game if the support meets all three of the criteria in the general rule. Here, one of the criteria is not met because you will be unable to accommodate other requests for support for comparable events of other similar youth and civic groups.

Conflicting Financial Interests

SCENARIO: Your agency tasks you to review bids on a contract to buy 500,000 mechanical pencils. Your review would involve comparing the price and quality of the pencils offered by the various competitors. One of the bidders is the Fine Point Pencil Co. of Boston,. Neither you nor anybody to whom you have personal or business ties has any financial interest in that company. However, if Fine Point wins the contract, it will subcontract to Ming Tian, Ltd., a company based in Hong Kong. Your spouse is employed on a salary by Ming Tian as a quality control specialist.

QUESTION: May you review the contract bids?

Possible Answers

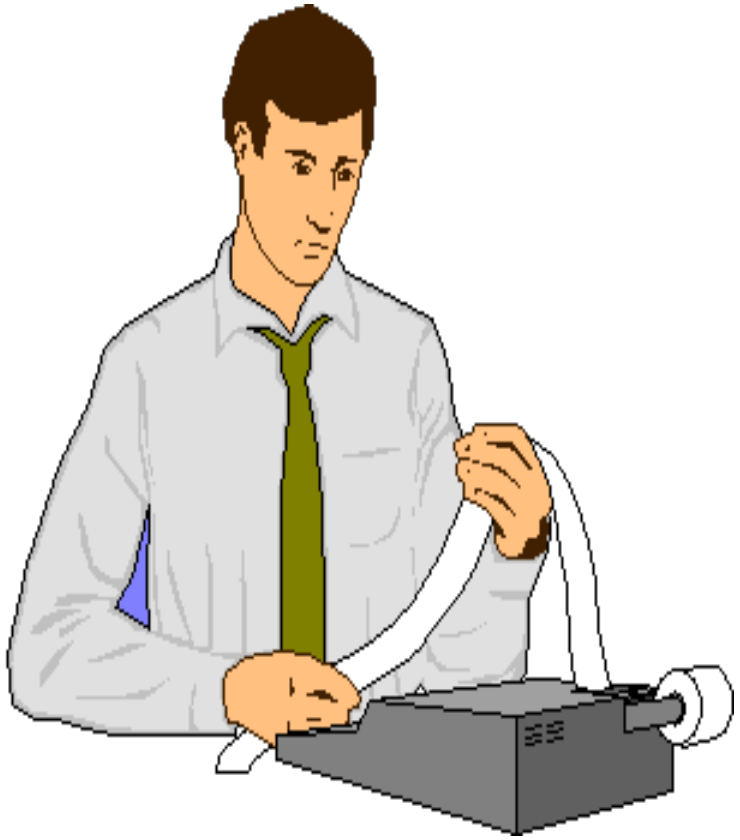
1. Yes. Ming Tian would only be a subcontractor, so a Government decision on which company gets the contract would not directly affect your spouse's financial interests as a salaried employee of Ming Tian.

2. Maybe. There is not enough information for you to determine whether a Government decision on which company gets the contract would directly affect your spouse's financial interests as a salaried employee of Ming Tian.

3. No. If Fine Point gets the contract, then Ming Tian gets the subcontract. This would predictably improve Ming Tian's profits, and your spouse is a salaried employee of Ming Tian. Thus, a Government decision on which company gets the

Correct Answer

#2. It is probable that a Government decision on which company gets the contract would not directly affect your spouse's financial interests as a salaried employee of Ming Tian. However, we do not have enough information to know for sure if that is the case here.



Use of Government Resources

SCENARIO: You have a Government travel card, which normally you use only when you are on official travel. On Sunday, however, your daughter calls from college to tell you that she needs a new laptop because her old one was destroyed when she jumped into the mosh pit. (She refuses to give you any further details.) You quickly purchase a new one on-line for $900, but since your credit card is at home, you use your Government travel card, knowing y when you ge

QUESTION: Since this is no cost to the Government, it is ok, right

Possible Answers

1. It is ok as long as you pay the travel card bill on time. The Department will never know. Actually, it's a benefit to the Department since it reaps the "points" from use of the travel card.

2. No, it is not ok, but don't worry because the Inspector General will not investigate any expenditure under $1000.
3. No, the travel card may not be used for any personal expenses.

Correct Answer

#3.

The travel card may <u>only</u> be used for travel-related expenses *while* you are performing official travel.

Supervisor Review of Financial Disclosure Reports

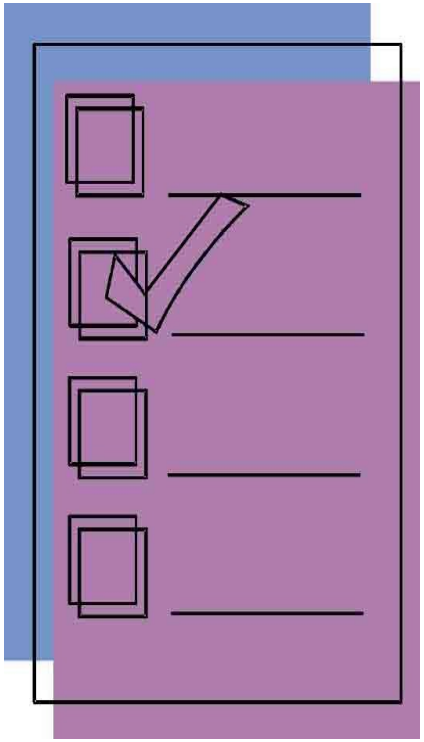
SCENARIO: You're the supervisor of your office and have collected and reviewed the annual financial disclosure reports from four employees. You've checked to ensure that they are complete and signed. You notice, however, that one of your employees has purchased stock in MEGASOFT, a software company. You expect that MEGASOFT will bid on a pending IT procurement at your agency, and had anticipated assigning this employee to that procurement action.

QUESTION: What is your next step?

Possible Answers

1. Sign the reports and forward them to the Ethics Counselor. Your responsibility is to collect the reports and forward them in a timely manner. The Ethics Counselor will review the reports, ensure they are complete, and check for conflicts of interest.
2. Check your organization's list of contractors. Since MEGASOFT isn't on the list, there can't be a conflicting financial interest. Now you can sign the reports and forward them to the Ethics Counselor.
3. Inform the employee that she may not participate in any part of the upcoming procurement if her stock creates a personal interest in the procurement. Make a note of the possible disqualification in the comments box and forward it to the Ethics Counselor. Consult with the Ethics Counselor to determine if there is an exemption or if the employee should be recused, reassigned, or should seek a waiver.

Correct Answer



#3. Here, the employee has stock in MEGASOFT and would have been assigned to work on a particular matter that may have affected MEGASOFT if the supervisor had not done his job and thoroughly reviewed the report The supervisor should also note the concern in the Comments box so that the Ethics Counselor is notified.

This type of review is very important, as a criminal statute, 18 U.S.C. 208, prohibits an officer or employee from participating personally and substantially in any particular matter that may affect his or her financial interests. Such an assignment here could have exposed the employee to a possible conflict of interest and commensurate criminal liability.

Conclusion

I. ***Ethics Contacts***

No matter what the ethics issue may be, if you're not sure what to do, check with your ethics counselor in advance.

I. Employees' Responsibilities under Executive Order 12674 (as amended):

DO

- Place loyalty to the Constitution, the laws, and ethical principles above private gain.
- Act impartially to all groups, persons, and organizations.
- Give an honest effort in the performance of your duties.
- Protect and conserve Federal property.
- Disclose fraud, waste, and abuse, and corruption to appropriate authorities.
- Fulfill in good faith your obligations as citizens, and pay your Federal, State, and local taxes.
- Comply with all laws providing equal opportunity to all persons, regardless of their race, color, religion

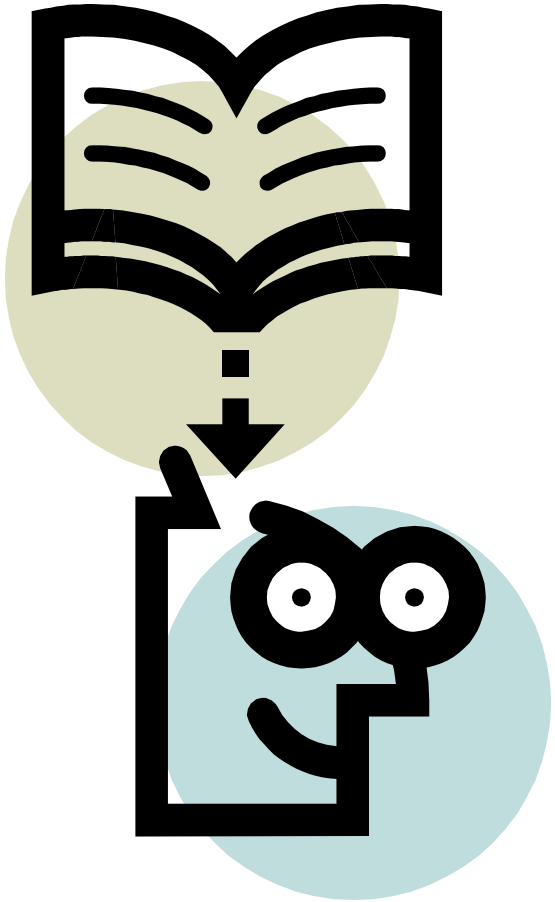
I. Employees' Responsibilities under Executive Order 12674 (as amended) (cont):

DO NOT

- Use nonpublic information to benefit yourself or anyone else.
- Solicit or accept gifts from persons or parties that do business with or seek official action from DOD (unless permitted by an exception).
- Make unauthorized commitments or promises that bind the government.
- Use Federal property for unauthorized purposes.
- Take jobs or hold financial interests that conflict with your government responsibilities.
- Take actions that give the appearance that they are illegal or unethical.

II. Guidance for DOD Personnel:

Specific guidance for DOD personnel may be found in DOD 5500.7-R, Joint Ethics Regulation, and at the DOD Standards of Conduct Office website:



http://www.defenselink.mil/dodgc/defense_ethics

III. Employees' Responsibilities under Federal Conflict of Interest Statutes:

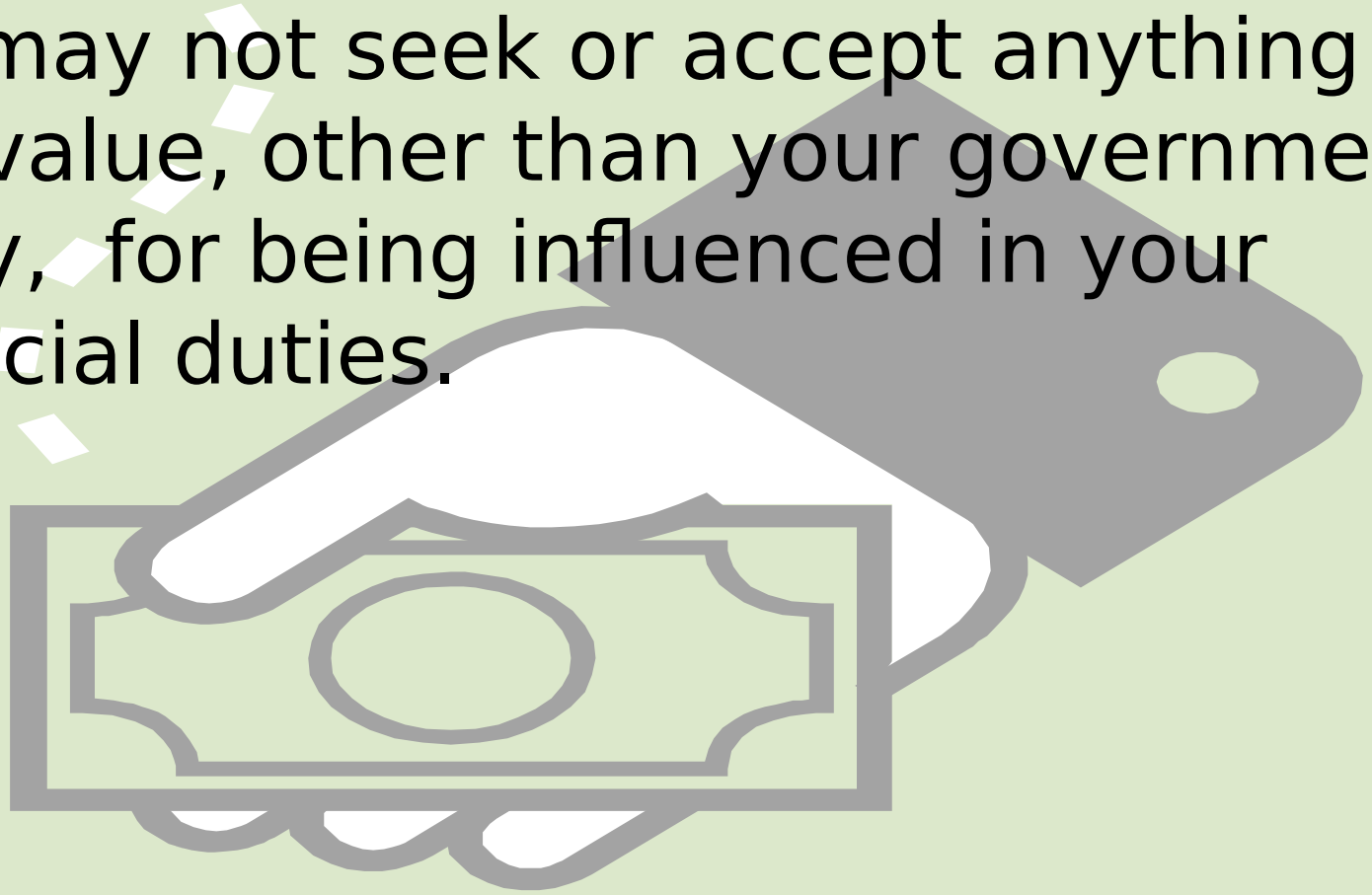
- *Conflicting Financial Interests*
- *Bribery and Graft*
- *Outside Representation or Compensation in Matters Involving Government*
- *Post-Government Employment Restrictions*

Conflicting Financial Interests

- **You may not do Government work on a particular matter that could affect your financial interests or those of your spouse, minor children, general partner, or organization with whom you are negotiating or have an arrangement for future or current employment.**
- **If you believe you have a conflicting financial interest, contact your ethics official to determine the appropriate remedy.**

Bribery and Graft

You may not seek or accept anything of value, other than your government pay, for being influenced in your official duties.



Outside Representation or Compensation in Matters Involving Government

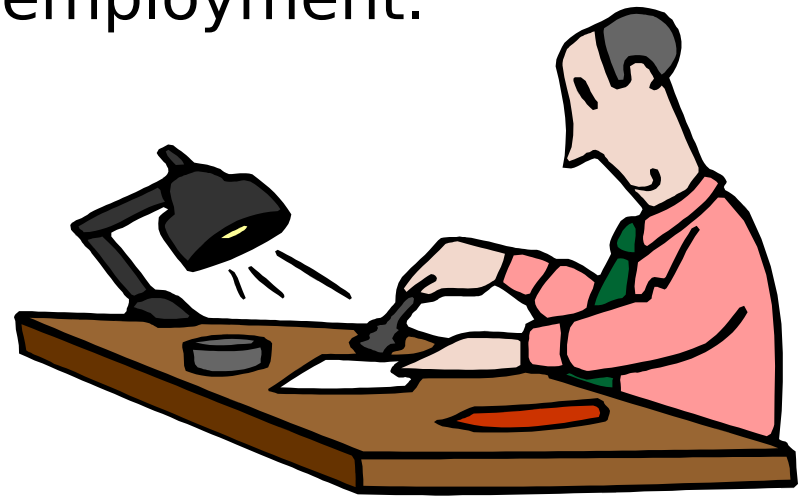
- You generally may not represent anyone other than the Government to a Federal agency or court on a particular matter involving the Government.

- You generally may not share in any compensation resulting from such a representation that was made by anybody else to a Federal agency or court during the time you were a Federal employee.

Post-Government Employment Restrictions

Seeking and Engaging in Nonfederal Employment while You are still in the Government

- You may not do Government work that affects someone with whom you are seeking employment.

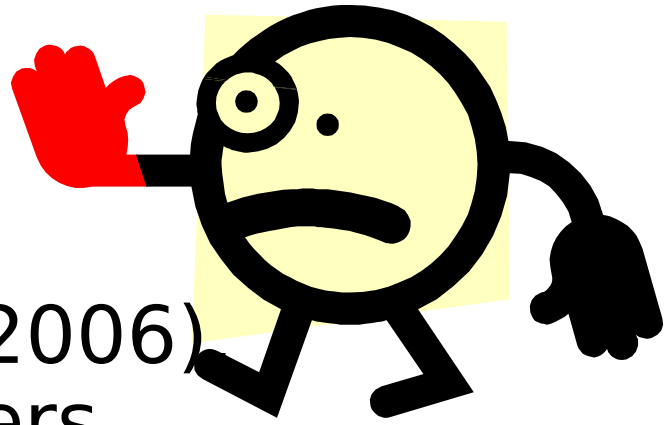


- If you engage in nonfederal employment while you are on terminal leave or otherwise still in Government service, you may not represent anybody outside the Government to the Government, with or without compensation, and may not share in compensation for any services performed by anyone to represent someone outside the Government to

Procurement Integrity Compensation Ban

- **No Compensation for One Year**
- **If You Held a Certain Position**
- **In a $10 Million Matter**
- **Ethics Advisory Letter**

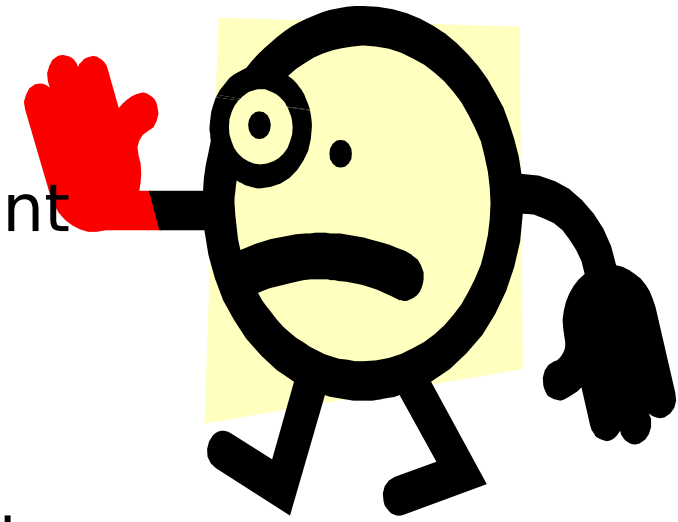
Restrictions Other Than Procurement Integrity



- Civilian Employees with Annual Rate of Basic Pay at or above $142,898 (in 2006) and General and Flag Officers
- All Officers and Employees
- Reservists and Retired Members of the Armed Forces
- Officers and Employees who file Public Financial Disclosure Reports (SF 278)

Restrictions Other Than Procurement Integrity

- For one year after leaving your senior position, you may not make any communication or appearance on behalf of anyone else, with intent to influence, to employees of any agency in which you served within one year of leaving your position.



- For one year after leaving your senior position, you may not aid, advise, or represent a foreign government or foreign political party, with the intent to influence employees of any department or agency.

Post-Government Employment Restrictions (cont)

All Officers and Employees

All Officers and Employees

- Lifetime Ban – Personal and Substantial Participation
- Two-Year Ban - Official Responsibility
- One-Year Ban - Trade or Treaty Negotiations
- Nonpublic Government Information

Reservists and Retired Members of the Armed Forces

- ***BEFORE*** **You Accept Compensation from a Foreign Government, Get Approval from your Service Secretary**
- **No civil office while on terminal leave**
- **6-month wait to work for D**
  (Waived During National Emergencies)

Supplementation of Federal Salary

You generally may not accept any compensation from a non-Federal source for your Government work.

You are strongly encouraged to consult your ethics counselor well *before* you separate from the Government about the post-Government service restrictions that apply to your specific situation.

IV. Ethics Contacts:

Visit us at

http://www.defenselink.mil/dodgc/defense_ethics/